

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

APPLICANT(S):	Couts, Jeffrey, et al.)
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SERIAL NO.:	10/027,163)
)
FILED:	December 20, 2001)
)
TITLED:	System and Method For Responding to a Communication Message With a Canned Reply)
)
EXAMINER:	Bayard, Djenane M.)
)
GROUP:	2141)
)
DOCKET NO.:	PF02257NA)

APPELLANTS' BRIEF UNDER 37 CFR 41.37

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May 29, 2007

CONTENTS

I.	<u>REAL PARTY IN INTEREST</u>	1
II.	<u>RELATED APPEALS AND INTERFERENCES</u>	1
III.	<u>STATUS OF CLAIMS</u>	1
IV.	<u>STATUS OF AMENDMENTS</u>	1
V.	<u>SUMMARY OF CLAIMED SUBJECT MATTER</u>	2
VI.	<u>GROUND OF REJECTION TO BE REVIEWED ON APPEAL</u>	3
VII.	<u>ARGUMENT</u>	3
	A. CLAIMS 1 THROUGH 10	3
	B. CLAIMS 11 THROUGH 20	5
VIII.	<u>CLAIMS APPENDIX</u>	7
IX.	<u>EVIDENCE APPENDIX</u>	11
X.	<u>RELATED PROCEEDINGS APPENDIX</u>	11

I. REAL PARTY IN INTEREST

The party named in the caption of this brief, namely Motorola Inc., is the real party in interest, the assignment of which was recorded on December 20, 2001, REEL/FRAME: 012411/0683.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals of interferences known to the Applicant, the Applicant's legal representative, or assignee which would directly affect or be directly affected by or having a bearing on the Board's decision in this pending appeal.

III. STATUS OF CLAIMS

Claims 1 through 4, 6, 8, 11 through 13, 16 and 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,584,494 to Manabe, et al. ("Manabe, et al. patent") and U.S. Patent No. 6,993,564 to Whitten, II ("Whitten patent").

Claims 5, 7, 9, 15, 17 and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over the Manabe, et al. patent in view of the Whitten patent and U.S. Patent No. 6,430,604 to Ogle, et al. ("Ogle, et al. patent").

Claims 10 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over the Manabe, et al. patent in view of the Whitten patent and U.S. Patent No. 6,301,609 to Aravamudan, et al. ("Aravamudan, et al. patent").

Claim 14 is rejected under 35 U.S.C. §103(a) as being unpatentable over the Manabe, et al. patent in view of the Whitten patent and U.S. Patent Application Publication No. 2004/0048615 to Kato, et al. ("Kato, et al. publication").

Claims 1 through 20 are being appealed.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to final rejection. A Response After Final was filed January 29, 2007, and a Pre-Appeal Brief Request For Review was filed May 27, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1 through 10 stand or fall together.

The present invention relates to a method for a data network system for responding to a communication message (FIG. 2, and page 11, lines 5-7). A communication message directed to a target device is received from an originating device, wherein the communication message includes an originating identification associated with the originating device (FIG. 2, step 204; and page 12, lines 13-16). Configuration data of the target device, which includes a plurality of classes and a plurality of canned replies associated with the plurality of classes, is retrieved (FIG. 2, step 206; and page 13, lines 6-12). Whether the target device is available for interactive communication with the originating device is determined (FIG. 2, step 208; and page 13, lines 19-21). An originating class of the originating device from the plurality of classes and a canned reply associated with the originating class based on the originating identification are identified (FIG. 2, steps 216, 220, & 224; page 12, lines 12 and "Table 1" thereunder; and page 14, line 5, through page 15, line 6). The communication message is routed to the target device if the target device is available for interactive communication with the originating device (FIG. 2, step 210; and page 14, lines 2-4). The canned reply is sent to the originating device if the target device is unavailable for interactive communication with the originating device (FIG. 2, steps 208, 218, 222, & 226; page 14, lines 5-7; page 14, lines 12-23; and page 15, lines 1-6).

Claims 11 through 20 stand or fall together.

The present invention also relates to a data network system for responding to a communication message (FIG. 1, data communication network 110; page 7, lines 8 through 10; and page 11, lines 5-7). The system comprises a messaging server for communicating with a plurality of client devices (FIG. 1, messaging server 112 & messaging proxy 120; page 7, lines 8-18; and page 8, lines 11-23). The messaging server receives a communication message directed to a target device from an originating device, retrieves a plurality of classes and a plurality of canned replies associated with the target device, identifies an originating class of the originating device from the plurality of classes and a canned reply associated with the originating class based on the originating device, and sends the canned reply to the originating device if the target device is unavailable for interactive communication with the originating device (FIG. 2; page 11, line 5, through page 15, line 6, including page 12, lines 12 and "Table 1" thereunder).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1 through 10 are unpatentable under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 6,584,494 to Manabe, et al. ("Manabe, et al. patent") and U.S. Patent No. 6,993,564 to Whitten, II ("Whitten patent"), with or without regard to one of the following references: U.S. Patent No. 6,430,604 to Ogle, et al. ("Ogle, et al. patent"), U.S. Patent No. 6,301,609 to Aravamudan, et al. ("Aravamudan, et al. patent"), and U.S. Patent Application Publication No. 2004/0048615 to Kato, et al. ("Kato, et al. publication").

Whether claims 12 through 20 are unpatentable under 35 U.S.C. §103(a) as being obvious in view of the Manabe, et al. patent and the Whitten patent, with or without regard to one of the following references: the Ogle, et al. patent, the Aravamudan, et al. patent, and the Kato, et al. publication.

VII. ARGUMENT

A. CLAIMS 1 THROUGH 10

Independent claim 1 provides, *inter alia*, "retrieving configuration data of the target device including a plurality of classes and a plurality of canned replies associated with the plurality of classes" and "identifying an originating class of the originating device from the plurality of classes and a canned reply associated with the originating class based on the originating identification". Thus, independent claim 1 requires a canned reply associated with an originating class. For example, as shown in FIG. 2, an individual canned reply, represented by step 218, is associated with a certain individual, represented by step 216. Also, a group canned reply, represented by step 222, is associated with a certain group of individuals, represented by step 220. Support for the above recitation is further found at page 11, lines 11 through 15, of the specification.

In contrast, the Manabe, et al. patent does not describe or suggest the above aspect of claim 1, and the Office Action September 27, 2006, appears to state the same at page 4, lines 14 through 18. The Manabe, et al. patent does not describe or suggest any type of configuration data that includes a plurality of classes, let alone a plurality of canned replies associated with the plurality of classes.

The Whitten patent describes an instant messaging system in which a potential recipient may prepare a list of senders, which may include categories and status indicators, but does not

disclose any type of canned reply associated with an originating class. Col. 3, lines 32 through 35, of the Whitten patent states that each category includes a list of status indicators that place restrictions on receiving messages from otherwise acceptable senders. The Whitten patent does not make reference to any other type of information that is associated with the categories, and it is evident from other parts of the Whitten patent that the status is different from canned replies (see Response of January 29, 2007). In particular, claim 1 provides for a canned reply associated with an originating class, whereas the Whitten patent discloses "a list of status indicators" (plural) associated with each category. Thus, the Whitten patent does not disclose any type of canned reply associated with an originating class, as required by claim 1.

Referring to the Advisory Action of February 21, 2007, the Advisory Action states that the Whitten patent teaches that the recipient breaks the list of senders into several categories expressing the possible interest of senders at col. 3, lines 28 through 30, thus breaking the senders into groups of users. Applicants agree that the Whitten patent describes an instant messaging system in which a potential recipient may prepare a list of senders, which may include categories and status indicators. On the other hand, the Whitten patent does not disclose any type of canned reply associated with an originating class.

The Advisory Action asserts that the Whitten patent describes sending a group canned reply to a particular member of an associated group when an inquiry or message is received from the member, and references col. 3, lines 45 through 60, and FIG. 3 in support of this assertion.

The Whitten patent, particularly col. 3, lines 45 through 60, describes a sender sending query to a potential recipient and, in response, the potential recipient sending availability and receptivity information back to the sender (steps 301 and 303). The availability and receptivity information sent by the potential recipient is not a canned reply associated with an originating class. In fact, the categories and status indicators of the list of senders are not even considered when the availability and receptivity information are sent to the sender.

The Whitten patent also describes a sender deciding whether to send an instant message to a potential recipient based on the availability status of the potential recipient (step 309). The instant message that may be sent by the sender is not a canned reply associated with an originating class. In fact, it is the receipt of a communication message that cause a canned reply to be potentially sent in claim 1. Also, not only is the information not canned, but the categories and status indicators of the list of senders at the potential recipient of the Whitten patent are not

associated with the instant message. It should further be noted that the instant message is sent from the sender to the potential recipient, whereas the canned reply of claim 1 is sent in the reverse direction, i.e., from the recipient to the sender. Thus, the Whitten patent does not describe or suggest any type of canned reply associated with an originating class, as required by the claims.

Moreover, the suggested combination of the Manabe, et al. patent and the Whitten patent would lack any type of configuration data of a target device that includes a plurality of canned replies associated with a plurality of classes. The Manabe, et al. patent describe a system that issues text messages based on user status, but does not describe or suggest any type of classification. The Whitten patent describes a list of senders that is divided into categories. However, the Manabe, et al. patent and the Whitten patent, individually or in combination, do not describe or suggest any association between these types of information. In fact, the Manabe, et al. patent and the Whitten patent do not show any recognition of the need to associate canned replies with user classes. Therefore, claim 1 distinguishes patentably from the suggested combination of the Manabe, et al. patent and the Whitten patent.

In addition, the Ogle, et al. patent, the Aravamudan, et al. patent, and Kato, et al. publication do not describe or suggest any type of configuration data of a target device that includes a plurality of canned replies associated with a plurality of classes, as required by claim 1. Therefore, claim 1 distinguishes patentably from the Manabe, et al. patent, the Whitten patent, the Ogle, et al. patent, the Aravamudan, et al. patent, Kato, et al. publication, and any combination of these references.

Claims 2 through 10 depend from and include all limitations of independent claim 1. Therefore, claims 2 through 10 distinguish patentably from the Manabe, et al. patent, the Whitten patent, the Ogle, et al. patent, the Aravamudan, et al. patent, Kato, et al. publication, and any combination of these references for the reasons stated above for claim 1.

B. CLAIMS 11 THROUGH 20

Independent claim 11 provides, *inter alia*, "a messaging server for communicating with a plurality of client devices, the messaging server being effective to receive a communication message directed to a target device from an originating device, retrieve a plurality of classes and a plurality of canned replies associated with the target device, identify an originating class of the originating device from the plurality of classes and a canned reply associated with the originating

class based on the originating device, and send the canned reply to the originating device if the target device is unavailable for interactive communication with the originating device". Thus, claim 11 require a messaging service that associates a canned reply with an originating class.

As stated above with regard to claim 1, the Manabe, et al. patent and the Whitten patent, independently or in combination, would lack any type of configuration data of a target device that includes a plurality of canned replies associated with a plurality of classes. The Manabe, et al. patent describe a system that issues text messages based on user status, but does not describe or suggest any type of classification. The Whitten patent describes a list of senders that is divided into categories. However, the Manabe, et al. patent and the Whitten patent, individually or in combination, do not describe or suggest any association between these types of information. Therefore, independent claim 11 distinguishes patentably from the Manabe, et al. patent, the Whitten patent and the suggested combination of these references.

In addition, the Ogle, et al. patent, the Aravamudan, et al. patent, and Kato, et al. publication do not describe or suggest any type of configuration data of a target device that includes a plurality of canned replies associated with a plurality of classes, as required by claim 11. Therefore, claim 11 distinguishes patentably from the Manabe, et al. patent, the Whitten patent, the Ogle, et al. patent, the Aravamudan, et al. patent, Kato, et al. publication, and any combination of these references.

Claims 12 through 20 depend from and include all limitations of independent claim 11. Therefore, claims 12 through 20 distinguish patentably from the Manabe, et al. patent, the Whitten patent, the Ogle, et al. patent, the Aravamudan, et al. patent, Kato, et al. publication, and any combination of these references for the reasons stated above for claim 11.

For the reason set forth above, Applicant respectfully requests reconsideration of the claims as pending in view of the above remarks.

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VIII. CLAIMS APPENDIX

1. A method for a data network system for responding to a communication message, the method comprising the steps of:

receiving a communication message directed to a target device from an originating device, wherein the communication message includes an originating identification associated with the originating device;

retrieving configuration data of the target device including a plurality of classes and a plurality of canned replies associated with the plurality of classes;

determining whether the target device is available for interactive communication with the originating device;

identifying an originating class of the originating device from the plurality of classes and a canned reply associated with the originating class based on the originating identification;

routing the communication message to the target device if the target device is available for interactive communication with the originating device; and

sending the canned reply to the originating device if the target device is unavailable for interactive communication with the originating device.

2. The method of claim 1, wherein the interactive communication is conducted in real-time between an originating user of the originating device and the target user of the target device.

3. The method of claim 1, wherein the step of determining includes the step of detecting whether an instant messaging application of the target device is active.

4. The method of claim 1, further comprising the step of configuring the canned reply by the target device before the step of receiving the communication message from the originating device.

5. The method of claim 1, wherein the step of sending the canned reply to the originating device includes the step of withholding the communication message from the target device.

6. The method of claim 1, further comprising the step of determining whether rules for configuration of the originating device exist.

7. The method of claim 6, further comprising the steps of routing a first canned reply to the originating device if the target device is in at least one classification of devices, and routing a second canned reply to the originating device if the target device is outside of the at least one classification of devices.

8. The method of claim 1, further comprising the step of determining whether rules for configuration of the target device exist.

9. The method of claim 8, further comprising the steps of routing a first canned reply to the originating device if a location of the target device is within a defined area, and routing a second canned reply to the originating device if the location of the target device is outside of the defined area.

10. The method of claim 1, further comprising the step of retrieving status information of at least one of the originating device and the target device, wherein the step of determining whether the target device is available for interactive communication includes the step of comparing the status information against the configuration data to determine whether the target device is available for interactive communication.

11. A data network system for responding to a communication message, the data network system comprising:

a messaging server for communicating with a plurality of client devices, the messaging server being effective to receive a communication message directed to a target device from an originating device, retrieve a plurality of classes and a plurality of canned replies associated with the target device, identify an originating class of the originating device from the plurality of classes and a canned reply associated with the originating class based on the originating device, and send the canned reply to the originating device if the target device is unavailable for interactive communication with the originating device.

12. The data network system of claim 11, wherein the messaging server is incorporated within the messaging server.

13. The data network system of claim 11, wherein the target device includes an instant messaging application that is active.

14. The data network system of claim 11, further comprising a location register coupled to at least one of either the messaging server and the messaging server, the location register being effective to generate a current location of the target device.

15. The data network system of claim 11, wherein the communication message is withheld from the target device.

16. The data network system of claim 11, wherein the messaging server includes rules for configuration of the originating device.

17. The data network system of claim 16, wherein the messaging server includes a first canned reply that is sent to the originating device if the target device is in at least one classification of devices, and a second canned reply that is sent to the originating device if the target device is outside of the at least one classification of devices.

18. The data network system of claim 11, wherein the messaging server includes rules for configuration of the target device.

19. The data network system of claim 18, wherein the messaging server includes a first canned reply that is sent to the originating device if a location of the target device is within a defined area, and a second canned reply that is sent to the originating device if the location of the target device is outside of the defined area.

20. The data network system of claim 11, wherein the messaging server retrieves status information of at least one of the originating device and the target device and compares the status information against the configuration data to determine whether the target device is available for interactive communication.

IX. EVIDENCE APPENDIX

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, entered by the examiner and relied upon by the appellant in the appeal, or relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

X. RELATED PROCEEDINGS APPENDIX

No decisions have been rendered by a court of the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of 37 C.F.R. § 41.37.